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*Chairman*: Mr. Bennouna ..... (Morocco)

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session** (A/59/17)

1. **Mr. Popkov** (Belarus) said that Belarus was revising its insolvency laws in keeping with the relevant UNCITRAL texts. The development of international trade as a means of promoting economic growth and raising the standard of living for citizens required the harmonization of international trade law, a task which UNCITRAL was carrying out through its model laws and legislative guides.

2. Belarus believed that its participation in UNCITRAL enabled it to safeguard its interests in the international context and, at the same, to improve its internal legislation, based on the best practices of other States. Belarus was working to harmonize its laws and was currently party to five of the nine international instruments developed by UNCITRAL. Belarus welcomed the technical assistance being provided by the secretariat to developing countries and countries with economies in transition, and together with UNCITRAL it planned to organize seminars for the exchange of experiences. He emphasized the need to increase the resources of the secretariat, especially in the areas of technical assistance and training, for which purpose funds from the donor community would be needed. There was also a need to strengthen cooperation and coordination among UNCITRAL and the International Monetary Fund, the World Bank, the regional economic commissions and other regional organizations working in the area of international trade law.

3. Belarus was keenly interested in participating in the discussions on international sales, public procurement, transport of goods, international settlements, electronic commerce and arbitration. The authorities of Belarus had established contacts and exchanged information and experiences with UNCITRAL in all those areas.

4. **Ms. Ow** (Singapore) said that despite the difficulties inherent in the mandate entrusted to UNCITRAL by General Assembly resolution 2205 (XXI), namely, furthering the progressive harmonization and unification of international trade law, Singapore was happy to be involved in the work of the Commission. In the current context of globalization, which made the unification of international trade law increasingly urgent, UNCITRAL had discharged its mandate admirably and its work had been accepted by several countries, including hers. Singapore had participated actively in the work of UNCITRAL since the 1960s and had adopted many of its conventions and model laws.

5. The delegation of Singapore congratulated the Commission on the completion and adoption of the UNCITRAL draft Legislative Guide on Insolvency Law, which Singapore hoped would be of use to developing States in modernizing their legislation on the matter. It also looked forward to timely completion of the work of the Working Group on electronic commerce on the draft convention on selected issues of electronic contracting, so that the convention could be presented to the Commission in the following year. Singapore also noted the progress of the Working Groups on arbitration and transport law, and hoped that the latter would complete its work on the draft instrument on carriage of goods in time for submission to the 39th session of the Commission. It also hoped that the Working Group on arbitration would complete its work in a timely manner. Singapore was pleased to note that the Working Group on Public Procurement had met recently to consider possible revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services, and it looked forward to the fruits of those efforts.

6. The delegation of Singapore was grateful to the secretariat for the completion of the digest of case law on the United Nations Sales Convention and for its work on the digest of case law on the New York Convention. Those texts would be presented the following year at seminars to commemorate the 25th and 50th anniversaries, respectively, of the two conventions, with one of the seminars being held in Singapore.

7. Although Singapore was a small country with limited resources, it would continue actively supporting the work of UNCITRAL through its participation in the various projects of the Working Groups on electronic commerce, public procurement, transport law and arbitration.

8. **Mr. Makarowski** (Sweden), speaking on behalf of the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the work of UNCITRAL was widely recognized for its contributions to the development of international trade law.

9. During the present year's sessions, the Working Group on insolvency law had concluded its work on the draft Legislative Guide on Insolvency Law, which was expected to be useful to many States in developing their legislation. The other working groups were also making progress, and the Commission would thus be able to continue furthering the development of international legal instruments and extending and improving training and technical legislative assistance.

10. The Nordic countries favoured the enlargement of the Commission, which would lead to wider knowledge of its work and help ensure acceptance of its texts by all States. The distribution of seats was important not only to reflect the growing interest in the work of the Commission, but also to ensure a fair balance in its future work. The Nordic countries emphasized the importance of continued discussion on funding to finance for the participation of developing countries.

11. **Mr. Romeu** (Spain), after noting that Spain was participating actively in the various UNCITRAL working groups, underscored the importance of the adoption of the Legislative Guide on Insolvency Law, which would undoubtedly contribute to the harmonization of laws worldwide. With regard to electronic commerce, Spain looked forward with great interest to the preparation of a draft international instrument on electronic contracting. The country also attached great importance to the development of a legislative instrument on carriage of goods by sea, on which much work remained to be done within the relevant working group before any thought could be given to holding a diplomatic conference on the subject. As concerned security interests, Spain wished to underscore the importance of the legislative guide currently being drafted, which would serve as a reference instrument for legislators, especially in the developing countries. In addition, it hoped that the 1994 UNCITRAL Model Law on Public Procurement of Goods, Construction and Services would be updated as soon as possible.

12. Spain welcomed the recent increases in the Commission's human resources, which had been made all the more necessary by the addition of 24 new members.

13. Finally, the delegation of Spain believed that exceptions should be allowed to the limits imposed by the Secretariat on the length of reports, particularly those of working group meetings, given their high degree of technical complexity. Spain also felt that some of the Commission's working methods should be modified and that consideration should be given to creating subcommittees to undertake the initial examination of topics to be discussed by each working group, thereby lightening their load and rendering them more effective.

14. **Mr. Isong** (Nigeria) welcomed the report of UNCITRAL, which reflected the invaluable work being carried out by the Commission in the development of international trade. Its success was evidenced by the universal acceptance of its instruments on commercial arbitration, electronic commerce, international contractual practices, maritime transport and banking and insolvency law, as well as its work in training experts for developing countries through workshops, seminars and conferences. Nigeria also welcomed the adoption, during the Commission's 37th session, of the draft Legislative Guide on Insolvency Law, which would facilitate assessment of the economic efficiency of insolvency legislation regimes and would enhance transparency, the legal framework, trust and cooperation in cross-border enterprises and investments at the subregional, regional and international levels. Nigeria therefore supported the use of both the legislative guide and the UNCITRAL Model Law on Cross-Border Insolvency in the revision of legislation relevant to insolvency.

15. Nigeria had established an investment regime that recognized the crucial role of foreign direct investment and of creating an environment that protected foreign investors while also ensuring that the country received quality services. Several institutions had been established to facilitate investment and promote exports. In that connection, he wished to highlight the importance of the draft legislative guide and of the model legal provisions for Nigeria and other developing countries.

16. Nigeria welcomed the progress of Working Group II in revising the UNCITRAL Model Law on International Commercial Arbitration, especially with

regard to interim measures of protection. Nigeria agreed with the Commission's view that care should be taken in determining the scope of the revision of the UNCITRAL Arbitration Rules. It also agreed that, to mark the 20th anniversary of the adoption of the Model Law in 2005, conferences should be organized to examine the experience of courts and arbitral tribunals in applying the legislation in various countries, as well as possible future work in the field of settlement of commercial disputes.

17. Nigeria congratulated the Commission and its working groups for the progress made in areas such as electronic commerce, transport law and security interests. It was well aware of the enormous difficulties involved in regulating electronic businesses and welcomed the efforts to finalize and submit the draft convention on electronic commerce for consideration by the Commission in 2005. Nigeria also looked forward to the outcomes of the World Summit on the Information Society in 2005.

18. Nigeria noted that the Commission had been working on the draft instrument on the carriage of goods [wholly or partially] [by sea], with an eye towards its completion and adoption in 2006. Several of the delegations that had participated in the Working Group had created an informal consultation group to continue the discussions via e-mail; however, some developing countries might be left out of those discussions because they had limited access to the Internet. For that reason, the informal consultation group should periodically provide other members of the Commission with progress reports.

19. Although the UNCITRAL Model Law on Public Procurement of Goods, Construction and Services remained an important international benchmark in procurement law reform, Nigeria was in favour of updating the law to include new practices and to simplify the presentation of the model provisions, but believed that caution should be exercised in order to preserve its basic principles and retain the provisions that had proved useful.

20. Nigeria would continue to support the compilation and dissemination of case law on UNCITRAL texts, the United Nations Sales Convention and other uniform law texts. Those publications were a fundamental aspect of the training and technical assistance activities of the Commission and were of great help for judges, arbitrators, jurists, university professors and public officials.

21. Trade remained one of the pillars of relations between countries, and the Commission's mandate in that regard was of primordial importance for Nigeria. But it was a mandate that no organization could carry out on its own, and Nigeria therefore encouraged the Commission to continue cooperating with other similar agencies. Nigeria applauded the success of the Colloquium on International Commercial Fraud held in Vienna, which had brought together national and international organizations and experts to discuss how best to address the enormous challenges posed by international commercial fraud.

22. Regarding training and technical assistance, Nigeria was grateful for the contributions to the Trust Fund for UNCITRAL Symposia made by France, Greece, Mexico, Singapore and Switzerland, but was sorry to see that there had been no contributions to the trust fund established to provide travel assistance to representatives of developing countries. Nigeria hoped that the Commission would issue a new appeal for contributions from relevant bodies of the United Nations system, organizations, institutions and individuals. It also urged Member States to consider the possibility of allocating resources for the fund under the regular budget of the United Nations. The lack of participation undermined the efforts of developing countries and widened the North-South gap. Nigeria also encouraged contributions to the trust fund as a demonstration of support for the New Alliance for Africa's Development.

23. **Mr. Sinaga** (Indonesia) noted that one of the achievements of the Commission in the previous year had been the adoption of the draft UNCITRAL Legislative Guide on Insolvency Law, which provided flexible approaches for States to implement key objectives to address both insolvency problems and their social and development implications.

24. Another important element in the Commission's report was the reference to the need for further study of the implications of electronic commerce, as fraudulent financial and trade practices were growing at a considerable rate. He therefore welcomed the suggestion contained in paragraph 112 of the report that the UNCITRAL secretariat should make lists of features commonly found in typical fraudulent schemes and disseminate it to all Member States.

25. In relation to the expansion of UNCITRAL, Indonesia believed that the incorporation of new members would facilitate broad participation by States with different legal systems in the legislative process within the Commission. However, growing membership would also make it necessary for UNCITRAL to be more efficient in its work. The reclassification of the Commission's secretariat as a division would help it to meet that objective.

26. Finally, Indonesia shared the suggestion put forward by the Chairman of the Commission in his introduction of the report concerning the importance of a voluntary fund to enable developing countries to participate fully in the future work of the Commission.

27. **Mr. Amayo** (Kenya) expressed his satisfaction with the results of the 37th session as reflected in the report, in particular the finalization and adoption of the draft Legislative Guide on Insolvency Law, prepared by the Working Group on that subject. He also commended the Commission on the progress of the Working Groups on arbitration, transport law, electronic commerce and security interests and on the headway made on the other issues with which the Commission was concerned.

28. Regarding insolvency, he noted that the type of insolvency regime adopted by a State had become a decisive factor in international credit ratings. Hence, the adoption of an internationally harmonized insolvency regime would enable countries which previously had had weaker regimes to compete effectively in international credit markets.

29. As for arbitration, Kenya recognized that, as an alternative dispute resolution mechanism, it was a rapid, economical and less legalistic means of settling differences. His delegation therefore welcomed the Commission's efforts to develop a common international standard. Although it recognized that the use of interim measures of protection, in particular ex parte interim measures, was a novelty in many legal systems, Kenya encouraged all States to try to find common ground on that important issue.

30. Kenya's legislation on commercial arbitration was based on the UNCITRAL Model Law on International Commercial Arbitration. However, there continued to a lack of definition in some areas, which could benefit from the work under way within UNCITRAL.

31. As concerned electronic commerce, electronic contracting was becoming a fundamental means of linking parties from different States. An international regime to regulate such transactions was long overdue. Working Group IV (Electronic Commerce) had made considerable progress in that regard and Kenya was confident that it would complete its work soon and that a harmonized international regime on electronic commerce would be adopted. However, due attention must be paid in that process to addressing the issue of the digital divide, as many developing countries, including Kenya, had been left behind in the development of information technology.

32. With respect to security interests, he noted that modern legislation on secured credit had a significant impact on the availability and cost of credit. Kenya believed that a harmonized legal regime for secured credit could help reduce the inequalities between parties in developed and developing countries with regard to access to low-cost credit. It therefore supported UNCITRAL's current efforts to develop an effective legal framework that would eliminate the legal obstacles to secured credit. Kenya also trusted that work on the development of a legislative guide on secured transactions would continue to move forward.

33. As for transport law, the Working Group had made significant progress on several difficult issues, including the scope of application of the instrument and the provisions concerning liability. It was important to resolve the remaining issues quickly.

34. With respect to future work in the area of public procurement, Kenya agreed with the Commission's view that, although the UNCITRAL Model Law on Public Procurement of Goods, Construction and Services had played an important role, novel issues and practices had arisen that justified an effort to update the text. Accordingly, it welcomed the holding of sessions to revise and strengthen the current law.

35. With regard to training and technical assistance, the UNCITRAL legal texts were a useful tool for promoting uniform interpretation and application of the Commission's texts in many countries. The technical assistance programme was of enormous value for developing countries and Kenya urged that adequate and sustainable resources be allocated to strengthen the programme.

36. The participation of developing countries in UNCITRAL was crucial to enable it to achieve its

fundamental objectives. Kenya wished to thank the States had contributed to the trust fund established to provide travel assistance to representatives of developing countries that were members of the Commission. Only universal participation would make it possible to fulfil UNCITRAL's basic mandate to harmonize and unify international trade law.

37. Kenya welcomed the expansion of the UNCITRAL secretariat and, in particular, the restructuring of its work and the establishment of two pillars, one dealing primarily with uniform legislation and the other focusing on technical assistance coordination and external affairs.

38. Finally, Kenya agreed with the Commission's recommendation concerning improvement of its coordination role. As the core legal body in the United Nations system in the field of international trade law, UNCITRAL should coordinate its work with other international organizations and agencies active in that sphere, which would enhance its effectiveness and avoid duplication and possible conflicts.

39. **Mr. Mezeme Mba** (Gabon) said that the legislative guide adopted by the Commission was an attempt to respond to pessimistic views that saw in laws on collective proceedings an inability of the law to resolve the difficulties of businesses and ensure satisfactory payment of creditors. The Commission had noted that the guide did not provide a single set of solutions, but rather served as an aid for evaluating the different approaches available and choosing among them. However, Gabon would have preferred to have specific guidance regarding the most suitable option for a particular economy. It also regretted that the legislative guide was limited to formal court proceedings, whereas laws that provided for recourse to the law and liquidation of assets generally envisaged preventive settlements, which gave the insolvent debtor the opportunity to decide whether or not to resort to the courts and afforded the debtor more possibilities to make restitution. Gabon adhered to the legal framework of the Organization for the Harmonization of Business Law in Africa, which comprised 17 Member States. His delegation hoped that that organization would be invited to participate in the next UNCITRAL session, which would enable the Commission to strengthen its coordination function.

40. As for the Commission's schedule of meetings, its diversity made it impossible for some delegations, including his, to participate fully in every session. Gabon therefore reiterated the UNCITRAL Chairman's appeal for financial assistance to cover the travel costs of experts from developing countries.

41. **Mr. Padukkage** (Sri Lanka) expressed his satisfaction with the report of the Commission (A/59/17) and the progress achieved during the last session of UNCITRAL, in particular the adoption of the draft Legislative Guide on Insolvency Law and the work on electronic commerce, arbitration, transport law, security interests and public procurement. UNCITRAL was the principal body of the United Nations system in the field of international trade law, and it had contributed significantly to the progressive harmonization and unification of international trade legislation in recent decades. Nevertheless, duplication and lack of consistency in trade law, both within and outside the United Nations system, continued to be a source of concern. Member States had repeatedly emphasized the need to improve coordination among intergovernmental, interregional and regional bodies in order to avoid duplication of efforts, which in turn affected the coordination and uniformity of the Commission's work. Sri Lanka was therefore pleased that the Commission intended to strengthen coordination for that purpose, and hoped that the Commission would closely monitor the work of other international and regional organizations and ensure that its points of view were duly represented. In the era of globalization, governments, the business community and donors were according ever more importance to the formulation of effective legal frameworks for international investment and trade. In that process the role of UNCITRAL was increasingly necessary. Many countries had still not incorporated the laws developed by UNCITRAL into their national legislation, despite the universal nature and usefulness of the texts. Technical assistance should be provided to countries that lacked the resources to enact domestic laws based on the model legislation. In disseminating the model laws, it was essential to bear in mind the practical situation and differences in level of development that existed among the countries concerned.

42. Sri Lanka was pleased with the expansion of the UNCITRAL secretariat and its conversion to the Division of International Trade Law within the Office of Legal Affairs. The strengthening of the Commission and of its secretariat was necessary in the light of the rapid increase in cross-border commercial transactions.

Sri Lanka was confident that the Division would successfully conclude the process of restructuring to deal both with the matter of uniform legislation and with the coordination of technical assistance, and it hoped that the resources allocated by the General Assembly in resolution 58/270 had improved the secretariat's capacity to achieve those objectives.

43. Sri Lanka reiterated the importance of public-private partnerships for the work of the Commission and the potential of the UNCITRAL texts to advance the goals of the Global Compact. To that end, the Commission should extend its support to similar initiatives within the United Nations system in order to disseminate its work.

44. **Mr. Sivuyile Maqungo** (South Africa) said that the report of the Commission exemplified its admirable work in progressively harmonizing and unifying international trade law. Particularly noteworthy were the adoption of a legislative guide on insolvency law and the consideration of 12 other substantive items during its 37th session. However, there was another aspect of the Commission's work that was of special importance for developing countries – namely, training and technical assistance. South Africa would like to see a greater focus on programmes to promote the existing conventions and model laws and provide assistance to chambers of commerce in developing countries. South Africa was pleased that the Commission had requested the secretariat to prepare a work programme and timetable for implementation of the extended technical assistance function, and it hoped that Africa would be accorded priority under that programme. In that connection, South Africa was grateful to the States that had made voluntary contributions to the Trust Fund for UNCITRAL Symposia. Finally, South Africa seconded Nigeria's appeal for the provision of assistance under the regular budget of the United Nations.

45. **Mr. Kuzmenkov** (Russian Federation) said that UNCITRAL's most important achievement in the past year had been the adoption of the draft Legislative Guide on Insolvency Law. The guide reflected important principles, such as balance between the interests of the various participants in bankruptcy proceedings, determination of the best way of liquidating and reorganizing businesses and the prevention of fraud. The Russian Federation was pleased with the guide's progressive approach, in particular the preference for reorganization of economic relationships prior to and instead of the traditional dissolution of the company in bankruptcy, which would give businesses a wider margin of economic and financial viability. Another advantage of the guide was the harmonization of the various criteria adopted by the States concerning priority of claims, redefinition of the main parameters for court and out-of-court proceedings and clarification of the mechanisms for appointing external administrators for debtor companies and supervising their activities. The Commission had made considerable progress in preparing a draft convention on specific issues relating to electronic contracting. One of the pending issues in that regard was determination of the scope of application of the future convention and its relationship to existing international treaties. His delegation hoped that the Commission would complete that work during its next session. Also of interest was the Commission's work on developing an efficient legal regime for security rights in goods involved in a commercial activity, including inventory. During the year, the Commission had continued to work on the issue of public procurement, which was very important, as major changes had occurred in that area since the adoption in 1994 of the UNCITRAL Model Law on Procurement of Goods, Construction and Services, notably with regard to electronic contracting, generalization of the practice of electronic reverse auctions and the need to ensure both confidentiality and transparency. Finally, UNCITRAL was to be commended for its work on arbitration and transport law.

46. **Mr. Asencio** (Mexico) welcomed the adoption of the draft Legislative Guide on Insolvency Law. The provisions in the guide would provide the legal means to preserve the value of a business in distress by enabling it to continue functioning, thereby protecting the jobs of its employees and avoiding negative economic repercussions caused by the loss of a business that provided goods and services. It also provided for the preservation of the economic value of the business's assets and rights through an orderly liquidation procedure that maximized the outcome of the disposal of assets and ensured equitable treatment for the debtor business and its creditors. Mexico looked forward to the consolidated publication that would incorporate the recommendations of the UNCITRAL Model Law on Cross-border Insolvency into the legislative guide.

47. As concerned arbitration, Mexico was pleased to note that the Working Group intended to complete its discussions on interim measures of protection during its next two sessions in order to present a final text to the Commission in 2005. It would also be a major step forward if the Working Group completed its work with regard to the written form of the arbitration agreement, which was, at present, a source of uncertainty. The delegation of Mexico believed that a probable solution would be to eliminate the writing requirement, as that requirement did not meet the current expectations of those engaged in international trade.

48. Regarding electronic commerce, his delegation applauded the work of the Working Group on electronic commerce and the progress made in drafting an international instrument dealing with certain issues of electronic contracting, which would facilitate the use of modern means of communication in cross-border commercial transactions. Mexico was in favour of holding the necessary consultations and discussions, and would even support their further expansion, in order to reach consensus on the convention's scope of application. His delegation hoped that the work would be completed during the first quarter of 2005; however, it was important not to impose any rigid time constraints that might hinder the development of a truly effective instrument to regulate electronic contracting. His delegation also urged that studies and consultations be carried out in order to maintain cooperation with other organizations that were also concerned with electronic commerce and collaborate in the development of harmonized regulatory frameworks.

49. With respect to maritime transport, his delegation had taken note of the progress made in preparing a draft instrument on carriage of goods, a complex regulatory undertaking that sought to provide a balanced approach to operations in that area and to address issues that had arisen in practice but had not theretofore been the subject of regulation at the global level. Mexico encouraged the Working Group to examine the supplementary provisions relating to carriage of goods at sea with due caution in order to respect existing international instruments that regulated the circulation of hazardous goods, as well as other goods subject to specific transport controls.

50. As to security interests, the delegation of Mexico noted the progress towards the development of a guide that would create mechanisms to ensure effective protection of the interests of creditors. The guide would be a very useful instrument for harmonizing the legal regime governing security rights.

51. Mexico supported the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and expected that the experience with the application of that instrument, particularly the practices developed with regard to electronic contracting, would contribute to and enrich the formulation of a regulatory framework that met countries' current needs in that regard. Mexico also welcomed the publication of the digest of case law on the United Nations Convention on International Sale of Goods, which would complement the efforts to achieve uniformity and harmonization of international trade law. For that reason, and because it considered the digest a valuable tool, the Government of Mexico had carried out various activities to disseminate it among federal judges, academics and law students with a view to encouraging its use as a reference.

52. His delegation agreed on the importance of limiting documentation. Nevertheless, it believed that it was essential not to sacrifice either the substantive content or the legislative history contained in the Commission's documents, given their importance and usefulness for the negotiation and subsequent interpretation of legal doctrine.

53. **Mr. Shin** (Republic of Korea) said that the Legislative Guide on Insolvency Law was a major step forward towards the establishment of an efficient and effective legal framework to address the financial difficulties of debtors. As a new member of the Commission, Korea welcomed the completion of that work and believed that, as recommended by the Commission, all States should utilize the Legislative Guide to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the Legislative Guide when revising or adopting legislation relevant to insolvency.

54. His delegation also welcomed the reports on the subjects of arbitration, electronic commerce and security interests, to which it attached great importance.

55. The delegation of Korea was particularly concerned with the issue of transport law. Often during the sessions comments had been made that were too favourable towards the interests of shippers, which might indicate a loss of impartiality. For that reason, it

might be advisable to take a fresh look into the work of the Working Group on transport law.

56. In conclusion, he noted that his delegation had participated actively in the deliberations and that the Republic of Korea looked forward to contributing even more actively to the future work of UNCITRAL.

57. **Mrs. Nuñez de Odreman** (Bolivarian Republic of Venezuela) said that the progressive harmonization and unification of international trade law was of paramount importance, but that special consideration should be given to the interests of the developing countries. Her country was pleased to have become a member of UNCITRAL, and with a view to making an active and multidisciplinary contribution to its work, the Government of Venezuela had engaged the relevant national authorities in studying the issues of concern to the Commission.

58. The delegation of Venezuela supported the Commission's efforts to achieve the best possible coordination with other organizations of the United Nations system and also believed it was necessary to provide assistance to cover the travel expenses of participants from developing countries that were members of the Commission.

59. **Mr. Boonpracong** (Thailand) said that the Legislative Guide on Insolvency Law was a balanced document that took account of the interests of all stakeholders, whether debtors, creditors or employees. In his opinion, its use by all States in applying the UNCITRAL Model Law on Cross-Border Insolvency would help promote economic development and investment and facilitate access to credit. His delegation encouraged further coordination and cooperation with the World Bank and the International Monetary Fund in order to facilitate the development of an international insolvency regime.

60. With regard to other issues, the delegation of Thailand noted with satisfaction the progress made by the various Working Groups in the areas of arbitration, transport law, electronic commerce and security interests, and it welcomed the Commission's decision to create a working group on public procurement to revise the UNCITRAL Model Law on Public Procurement of Goods, Construction and Services. His delegation was in total agreement with the Commission's view that the revision was necessary, given the evolution of public procurement practices, in particular electronic contracting, and Thailand looked forward to cooperating fully with the Commission in that area.

61. The delegation of Thailand also shared the Commission's view that its work should be directed towards promoting the adoption and uniform application and interpretation of its texts, particularly through training and technical assistance and through collection and dissemination of information. His delegation joined the Chairman of UNCITRAL in appealing for increased resources for the Commission's activities and programmes.

62. As for reducing the length of documents related to the work of the Commission, he shared the concerns expressed by other delegations, but pointed out that the reduction would not necessarily mean compromising the quality of the documentation.

63. Finally, he emphasized that Thailand attached great importance to the work of UNCITRAL and that it had adopted the Commission's standards and recommendations in its national legislation, in particular the 1998 law on electronic commerce and the 2002 law on arbitration.

64. **Mr. Wisitsora-At** (Chairman of UNCITRAL) was pleased with the support shown for the Commission's work on the Legislative Guide on Insolvency Law and the attention given to the appeals for technical assistance and training, as it was necessary to create infrastructure in order to harmonize legislation.

**Agenda item 151: Observer status for the Shanghai Cooperation Organization in the General Assembly** (A/59/141 and A/C.6/59/L.3)

65. **Mr. Zhang** (China), speaking on behalf of the States members of the Shanghai Cooperation Organization (Republic of Kazakhstan, China, Republic of Kyrgyzstan, Russian Federation, Republic of Tajikistan and Republic of Uzbekistan), recalled that the Organization had been created on 15 June 2001 in Shanghai, China. The Organization's purposes were to strengthen mutual trust, good neighbourliness and friendship among member States, to promote cooperation among them in the political and economic spheres and in trade, science and technology, culture, education, energy, transportation, environmental protection and other fields, to work together to maintain and guarantee regional peace, security and stability, and to promote the creation of a new

international political and economic order featuring democracy, justice and rationality. Security and economic cooperation were two priorities of the Shanghai Cooperation Organization Cooperation, with cooperation being focused on the fight against terrorism. The Organization had established a mechanism for combating terrorism, and joint bilateral and multilateral military exercises had been conducted for that purpose. In the area of economic cooperation, in September 2003 the States members of the Shanghai Cooperation Organization had ratified the Plan for Multilateral Economic and Trade Cooperation, which explicitly identified priority areas, main tasks and implementation mechanisms for economic and trade cooperation among the six member States.

66. The Shanghai Cooperation Organization followed the principles of nonalignment, openness and not targeting any other country or region. It stood ready to conduct dialogue, exchanges and cooperation in all forms with other nations and international organizations. The Organization strictly observed the purposes and principles of the Charter of the United Nations and was prepared to cooperate with the United Nations in all its spheres of endeavour. The States members of the Organization believed that the granting of observer status in the General Assembly would foster closer cooperation between the Shanghai Cooperation Organization and the United Nations and its various agencies in areas related to peace and development.

67. On behalf of the co-sponsors of draft resolution A/C.6/59/L.3, he asked the Committee to recommend that the General Assembly grant the Shanghai Cooperation Organization observer status in the Assembly.

68. **Mr. Moldogaziev** (Kyrgyzstan) reiterated the main objectives of the Shanghai Cooperation Organization and its cooperation activities with regard to security and economic issues, noting that the Organization was one of the first international organizations that had expressly advocated combating the three forces of terrorism, separatism and extremism. The States members of the Organization believed that the granting of observer status would help promote and strengthen cooperation between the Shanghai Cooperation Organization and the United Nations, and he therefore requested the Commission to recommend to the General Assembly that it grant observer status to the Shanghai Cooperation Organization.

69. **Mr. Kuzmenkov** (Russian Federation) endorsed the statement of the representative of Kyrgyzstan and affirmed that the granting of observer status for the Shanghai Cooperation Organization in the General Assembly would constitute a tangible contribution to international peace and security.

70. **Mr. Kazykhanov** (Kazakhstan) expressed his full support for the statement made by the representative of the People's Republic of China and said that Kazakhstan attached great importance to strengthening the ties between the United Nations and the Shanghai Cooperation Organization, whose cooperation with other countries and international organizations in the political, commercial, economic, humanitarian and scientific spheres would benefit both organizations and would contribute to the achievement of the common objective of ensuring global peace and stability.

*Consideration of draft resolution A/C.6/59/L.3 was postponed.*

**Agenda item 152: Observer status for the Southern African Development Community in the General Assembly** (A/59/142 and A/C.6/59/L.5)

71. **Mr. Dube** (Botswana), speaking on behalf of the States members of the Southern African Development Community (Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe) and new candidate Madagascar, introduced draft resolution A/C.6/59/L.5 on the granting of observer status for the Southern African Development Community in the General Assembly.

72. The Southern African Development Community had been established in 1992. Its objectives were to promote economic growth and development, alleviate poverty and improve quality of life for the peoples of southern Africa, promote common political values, systems and other shared values which were transmitted through institutions that were democratic, legitimate and effective, promote and defend peace and security, and promote sustainable development on the basis of collective self-reliance and the interdependence of member States.

73. The United Nations and its agencies had played an active role in the creation of the Community and had lent support for its programme of action. The two organizations shared common aspirations and values with regard to democracy, human rights and the rule of law, as well as the desire to achieve the Millennium Development Goals. In that connection, on 17 January 2003 the General Assembly had adopted resolution 57/44 on cooperation between the United Nations and the Southern African Development Community.

74. Bearing in mind the increase in cooperation between the two organizations, it was desirable to strengthen and consolidate relations between the United Nations and the Southern African Development Community by granting the latter observer status in the fifty-ninth session of the General Assembly, a request which had been approved by the heads of State and Government of the Southern African Development Community at the Summit held in Mauritius on 16 and 17 August 2004.

75. **Mr. Chidyausiku** (Zimbabwe) said that, despite the problems that southern Africa faced, the region had enormous potential that remained untapped many years after the creation of the Southern African Development Community in Windhoek, Namibia, in August 1992.

76. Zimbabwe had been one of the first States to respond to the call to create the Southern African Development Community, whose objectives included the elimination of barriers to trade and investment and the promotion of free movement of people across shared borders. In the area of international peace and security, the Community had served as a complement to the United Nations in procuring the peaceful settlement of disputes and carrying out peacekeeping operations, as evidenced by the peace missions in Lesotho and the Democratic Republic of the Congo and the creation of the United Nations Mission in the Democratic Republic of the Congo (MONUC) on the basis of the activities of the Southern African Development Community. Article 54 of the Charter of the United Nations stipulated that the Security Council was to be kept informed of activities undertaken under regional agreements for the maintenance of international peace and security, which in the case of the Southern African Development Community would be easier with the granting of observer status.

77. Given that the objectives of the Community were entirely consistent with the purposes and principles of the United Nations and bearing in mind its central role in the African Union, he appealed to all delegations to support the Community's request.

*Consideration of draft resolution A/C.6/59/L.5 was postponed.*

**Agenda item 157: Observer status for the Collective Security Treaty Organization in the General Assembly** (A/59/195 and Corr.1 and A/C.6/59/L.4)

78. **Mr. Kazykhanov** (Kazakhstan), speaking on behalf of Armenia, Belarus, Kazakhstan, Kyrgyzstan, the Russian Federation and Tajikistan, introduced draft resolution A/C.6/59/L.4, entitled "Observer status for the Collective Security Treaty Organization in the General Assembly".

79. The Collective Security Treaty Organization had been established on 18 September 2003 as an intergovernmental organization aimed at strengthening peace and international and regional security and stability and protecting on a collective basis the independence, territorial integrity and sovereignty of its member States. In pursuing those objectives, member States asssigned priority to political means, in conformity with the Charter of the United Nations and the principles of international law. The Organization attached great importance to the problems of terrorism and extremism, drug-trafficking and proliferation of weapons of mass destruction, and it had taken significant practical measures to strengthen its operational and political capacity with regard to drug-trafficking and illegal migration, unification of international anti-terrorism legislation, consolidation of a coalition to combat terrorism, and other areas.

80. The Collective Security Treaty Organization had developed a standing peace-making mechanism that would enable it to participate in peace-making operations, including those carried out under the aegis of the United Nations. The Collective Security Treaty Organization was cooperating with the United Nations in the reconstruction work following the Afghanistan conflict, and its members were pursuing a coordinated strategy for the rehabilitation of businesses, training, transport of goods and economic and humanitarian cooperation. There was real potential for cooperation with the United Nations on the basis of the principles of partnership, joint participation and complementarity. The granting of observer status would make it possible to strengthen collaboration between the two

organizations, through regular and well-organized contacts, and he therefore requested the Committee to recommend to the General Assembly that it grant observer status to the Collective Security Treaty Organization.

81. **Mr. Moldogaziev** (Kyrgyzstan) said that the States members of the Collective Security Treaty Organization considered the collective security system that they were creating an integral part of the European and Asian security system. One of the Organization's key objectives, enshrined in its charter, was to coordinate and join forces to work against international terrorism and other threats to security. In September 2003, collaboration in the framework of the Treaty had evolved into collaboration in the framework of a regional international organization, as provided for under Chapter VIII of the Charter of the United Nations; its member States participated directly in relevant international security institutions. Granting the Organization observer status in the General Assembly would help improve its cooperation with the United Nations in maintaining peace and security, both regionally and globally.

82. **Mr. Kuzmenkov** (Russian Federation) said that granting the Collective Security Treaty Organization observer status in the General Assembly would enhance cooperation between the two organizations, help strengthen international security and improve the effectiveness of collective measures to address new challenges and threats, in particular international terrorism and extremism.

*Consideration of draft resolution A/C.6/59/L.4 was postponed.*

**Agenda item 159: Observer status for the Economic Community of West African States in the General Assembly** (A/C.6/59/L.6)

83. **Mr. Tachie-Menson** (Ghana), speaking on behalf of Burkina Faso, Cape Verde, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo, introduced the draft resolution on observer status for the Economic Community of West African States in the General Assembly, noting that Benin, Côte d'Ivoire and the United Kingdom of Great Britain and Northern Ireland had become also become co-sponsors.

84. The treaty establishing the Economic Community of the West African States (ECOWAS) had been signed in 1975 and had been registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter. Through the years, ECOWAS had established various mechanisms to accelerate the economic and social development of the subregion; the possibility of a monetary union was currently under consideration. Mindful of the linkage between social and economic development, on the one hand, and peace and security, on the other, the Community had also created peacekeeping and mediation mechanisms, which had been remarkably successful in containing the destabilizing forces in some countries of the subregion (Côte d'Ivoire, Guinea-Bissau, Liberia and Sierra Leone, among others).

85. The relationship between ECOWAS and the United Nations system dated back to the Community's inception. The Economic Commission for Africa had been actively involved in its founding, and it had also received assistance from many other agencies of the system. For all those reasons, it was appropriate to formalize the relationship by granting ECOWAS observer status in the General Assembly. The resolution to that effect would not have any financial implications, and he therefore requested the members of the Committee to support it.

86. **Mr. Awanbor** (Nigeria) firmly supported the request that the Economic Community of West African States (ECOWAS) be granted observer status in the General Assembly, given the major achievements registered by ECOWAS over its three decades of existence as a regional organization, always adhering to its basic principles, which included the maintenance of peace, stability and security in the region through promotion and strengthening of the ties of good neighbourliness. ECOWAS had been formed originally with primary objective of achieving economic integration and shared development, leading ultimately to the establishment of a unified economic zone in West Africa. Its scope had since expanded to include socio-political interactions and mutual development in related spheres. As everyone was aware, the Organization had a long tradition of working to promote and consolidate systems of democratic government in member States through active cooperation between neighbouring countries and peaceful settlement of disputes. The non-aggression protocol among ECOWAS member States had been a true legal instrument that had contributed greatly to stability and the resolution of conflicts. The ECOWAS

Military Observer Group (ECOMOG) was the body within the organization responsible for peacekeeping and the first such group established by a regional organization. ECOMOG's contribution to the maintenance of peace during the 1990s, particularly its intervention to end civil war in Liberia and Sierra Leone, was well known. Undeniably, the activities of ECOWAS in the West Africa subregion had greatly enhanced the work of the United Nations in maintaining international peace and security. The objectives and programmes of action of the United Nations system and its various agencies could be better fulfilled by strengthening effective cooperation with regional bodies such as ECOWAS. Regional and subregional organizations also had an important role to play in achieving the Millennium Development Goals and in combating international terrorism and the pandemic of HIV/AIDS and other infectious diseases. For all those reasons, the delegation of Nigeria supported the request for observer status for ECOWAS in the General Assembly.

*The meeting rose at 12.55 p.m.*

United Nations A/C.6/59/SR.3

# General Assembly

Fifty-ninth session

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## Sixth Committee

**Summary record of the 3rd meeting**

Held at Headquarters, New York, on Thursday, 7 October 2004, at 10 a.m.

*Chairman :* Mr. Bennouna ..... (Morocco)
*Later :* Mr. Diaz Paniagua ..... (Costa Rica)

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04-53980 (E)

*The meeting was called to order at 10.20 a.m.*

**Agenda item 147: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization** (A/59/33, A/59/189 and Add.1 and A/59/334)

1. **Mr. Peersman** (Chairman of the Special Committee on the Charter of the United Nations and on Strengthening the Role of the Organization) presented to the Sixth Committee the report on the work of the Special Committee during its 2004 session (A/59/33).

2. He noted that the Special Committee had met in New York from 29 March to 8 April 2004 and had continued its work as mandated by the General Assembly in operative paragraphs 3 and 4 of resolution 58/248.

3. He then went through the various chapters of the report, commenting briefly on their content. He drew attention in particular to paragraph 28 in chapter III, concerning the maintenance of international peace and security, which contained the recommendation that during its current session the General Assembly should address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions. The next section of the same chapter dealt with the working paper submitted by the Russian Federation, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures", of which the sponsoring delegation had submitted a new version for consideration at the 2005 session of the Special Committee. With regard to peaceful settlement of disputes, which was the subject of chapter IV of the report, no proposals on that topic had been submitted to the Special Committee for consideration during the 2004 session. As for the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, the Special Committee had heard a report by Mr. Ralph Zacklin, Assistant Secretary-General, Officer-in-Charge of the Office of Legal Affairs, and had been able to address questions to him on the status of the Repertory.

4. **Mr. Shunmugasundaram** (India) underscored the importance of Article 50 of the Charter, relating to assistance to third States affected by the application of sanctions under Chapter VII. As the Security Council acted on behalf of all Member States when it imposed sanctions, it had a responsibility to alleviate any hardship that might be suffered by third States as a result of those sanctions. It also had a responsibility to assess the possible effects of sanctions prior to their imposition and apply a clear and coherent methodology for the imposition, application and lifting of sanctions. Sanctions should be clearly defined, targeted and imposed for a specific time frame, subject to periodic review and lifted as soon as the reason for their imposition had ceased to exist. The Council should also provide adequate and prompt assistance on the basis of an assessment of humanitarian conditions in the targeted States and affected third States. In addition, the Council should consider establishing a fund financed from assessed contributions based on the scale applicable to peacekeeping operations, as well as voluntary contributions.

5. Regarding the maintenance of international peace and security, the proposal of the Russian Federation for a declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures provided a useful basis for further consideration of the topic, although it was essential to obtain the broadest possible agreement among Member States. As to the proposal of the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions, India believed that the Charter defined the precise manner and circumstances in which sanctions or other coercive measures could be imposed. His delegation felt that a cautious approach needed to be taken with regard to conferring on target States a right to seek and obtain just compensation for unlawful damage sustained owing to illegal or excessive sanctions which would call into question the very legality of the sanctions imposed.

6. With respect to the proposal of the Russian Federation on peacekeeping operations, India believed that the Special Committee should concern itself only with the legal angle, as the political and operational aspects of peacekeeping had to be dealt with by other specialized bodies. The Cuban proposal on redefining the powers and functions of the General Assembly and its relationship with the Security Council had been under consideration for some time. India attached great

importance to that reform and was willing to consider any forward-looking suggestions, as long as they did not lead to duplication of work or involve a review of the basic structure of the Charter.

7. The contribution of the Special Committee in the area of peaceful settlement of disputes had been significant. In India's view, any recourse to dispute settlement mechanisms required prior consent of the parties to the dispute.

8. Turning to the proposal on the Trusteeship Council, he said that India considered it improper at the present time to envisage a role for the Council in dealing with the global commons or the common heritage of mankind, as those issues were adequately covered under the United Nations Convention on the Law of the Sea and other international agreements currently in force. Despite the difficulties, India believed that consensus had to be reached on what functions should be assigned to the Trusteeship Council. Consensus should also be sought among all concerned as to how to improve the working methods of the Committee, bearing in mind the ideas outlined in the revised working paper submitted by Japan and co-sponsored by the Republic of Korea, Thailand, Uganda and Australia. Finally, India believed that the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council were valuable sources of information and indispensable tools for preserving the institutional memory of the United Nations, and his delegation therefore supported their continued publication. As concerned the identification of new subjects, India was of the view that the Committee should first deal with the proposals before it, rather than searching for new areas of work.

9. **Ms. Noland** (Netherlands), speaking on behalf of the European Union and the candidate countries Bulgaria, Croatia and Romania; the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, and Serbia and Montenegro; and European Free Trade Association (EFTA) countries and members of the European Economic Area Iceland, Liechtenstein and Norway, referred first to the deliberations on the maintenance of international peace and security, in particular the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions. The European Union recognized that sanctions could have negative effects on civilian populations and third States, and it therefore welcomed the continuing recourse to targeted sanctions, which preserved the effectiveness of sanctions while minimizing their negative impact. In that context, she welcomed the important work being done on the subject in other forums within the United Nations. The Commission and States members of the European Union had devoted conferences and workshops to specific questions relating to sanctions, while the Secretary-General had presented a report on the subject and the Security Council had taken various measures, among them the establishment of a working group on general issues relating to sanctions and, more recently, the Analytical Support and Sanctions Monitoring Team.

10. As concerned the proposal of the Russian Federation on basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures, although the working paper was a useful basis for further consideration, the European Union believed that the issues addressed would be better discussed in forums other than the Special Committee.

11. With regard to peaceful settlement of disputes, the European Union reiterated the need for continued emphasis on the means of peaceful settlement enshrined in the Charter of the United Nations, the need to have recourse to them at the earliest possible stage and the need to apply the principle of free choice of means.

12. As to the proposals concerning the Trusteeship Council, the Union European held the view that it would be premature to abolish the Council or to change its status, since its existence did not entail any financial implications for the United Nations and assigning new functions to it would require an amendment to the Charter.

13. Regarding the working methods of the Special Committee, the European Union supported the suggestions made in the revised working paper presented by the Japan and co-sponsored by the Republic of Korea, Thailand, Uganda and Australia, and reiterated its willingness to support initiatives that might improve the working methods and revitalize the Special Committee.

14. **Mr. Song** (Democratic People's Republic of Korea) said that in order to strengthen the United Nations it was essential to ensure its central role in

addressing international issues, and to that end it was necessary thoroughly to reject high-handedness and unilateralism. That was an issue of utmost importance in maintaining an international order led by the United Nations in which the will of the international community was respected. Another important measure for strengthening the role of the United Nations was its democratization. In that regard, it was essential to give more power to the General Assembly and to reform the Security Council.

15. The international community was increasingly concerned over the issue of sanctions. That was because sanctions did not contribute to the fair solution of disputes, but rather entailed serious economic and humanitarian consequences, not only in the target countries but also in neighbouring countries. Sanctions were being abused by some countries for political purposes, leading to the overthrow of legitimate governments and the subversion of political and economic systems of sovereign States. Sanctions should be the last resort for settlement of disputes and, even in that case, the objective, target and time frame of the sanctions should be clearly defined. To that end, it would be desirable to establish a mechanism whereby resolutions of the Security Council on sanctions and the use of armed force would be subject to approval by the General Assembly. Unilateral sanctions, imposed outside the United Nations, were a violation of the sovereignty of developing countries and an impediment to their sustainable development.

16. In the case of the Democratic People's Republic of Korea, the sanctions imposed by a superpower unilaterally for more than half a century had caused immeasurable loss and damage and had greatly hampered the country's independent development. An increasing number of countries were sustaining serious consequences as a result of the application of sanctions. That situation made it urgent to examine in depth all forms of unilateral sanctions which individual countries imposed on third countries outside the United Nations. The delegation of the Democratic People's Republic of Korea was of the view that the Special Committee should give due attention to the issue of the dissolution of illegal institutions, such as the United Nations Command in South Korea, over which the United Nations had no authority and which was contrary to the objectives and principles of its Charter. The Secretariat and States Members of the United Nations should pay due attention to that abnormality and take the necessary measures to implement resolution 3390 (XXX) B of the General Assembly, which called for the dissolution of the United Nations Command and the replacement of the armistice agreement with a peace agreement.

17. **Ms. Ramos** (Cuba) said that the Special Committee had a crucial role to play in the current United Nations reform process, which called for, above all, ensuring effective adherence to the Charter by all Member States, re-establishing the central role of the Organization in international relations, recognizing the supremacy of international law, re-establishing the collective security system and ensuring the development of multilateralism and cooperation among States.

18. One of the fundamental elements of the reform process was democratization of the principal organs and, especially, revitalization of the General Assembly, as affirmed in the Millennium Declaration.

19. The delegation of Cuba emphasized once again the need to find a permanent solution to the problem of implementation of the provisions of the Charter concerning assistance to third States affected by the application of sanctions under Chapter VII, a matter which could not be considered separately from the issues of application of sanctions by the Security Council, reform of the Council and of its working methods, and expansion of its membership.

20. The imposition of sanctions was an extreme measure that should be contemplated only when all other means of settling disputes peacefully had been exhausted and after a careful assessment of the economic, social and humanitarian impact of sanctions in the short and long terms. As the Council acted on behalf of all Member States, the application of sanctions against a State should be based on a collective decision or should at least reflect the understanding, approval and collective will of the rest of the Member States. The application of sanctions could not be a second privilege in addition to the veto, nor could it be a coercive instrument wielded by some permanent members of the Security Council. Hence, it was essential to democratize the Council's decision-making processes with regard to sanctions and to ensure that its decisions reflected the collective will of the Organization.

21. Sanctions must have clear objectives and precise time frames. Any attempt to use sanctions to change

the political or legal system of a country or resolve disputes was illegal and an infringement of international law. Any sanctions regime must include specific and appropriate measures to ensure that the affected population received the necessary humanitarian aid. Sanctions regimes should be subject to periodic review and adjustment, taking into account the humanitarian situation in the target State.

22. In order for sanctions to serve as an effective and fair mechanism, a true and dynamic interrelationship should be established between the General Assembly and the Security Council. The Assembly should be actively involved in decision-making on the possible application of sanctions against a Member State and in subsequent monitoring of their implementation.

23. The delegation of Cuba was concerned about the future of the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council and therefore supported the recommendation contained in paragraph 111 of the Committee's report concerning the possibility of establishing a trust fund.

24. The Special Committee on the Charter had the task of contributing to a process of reforms that would ensure that every activity of the United Nations and of its principal organs was inspired by the letter and spirit of the Charter, served to fulfil the agreed mandates and upheld the sovereign equality of all Member States.

25. **Mr. Nguyen Duy Chien** (Viet Nam) welcomed the Special Committee's recommendation that the General Assembly address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions. In order to avoid counterproductive or negative consequences occurring as a result of sanctions, they should be resorted to only after all means of peaceful settlement of disputes had been exhausted and in accordance with the provisions of the Charter and international law. Sanctions should be clearly defined, targeted and should be imposed for a specific time frame. They should be subject to periodic revision and should be lifted as soon as the reasons for their application had ceased to exist.

26. Viet Nam noted with satisfaction the results of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States, and appreciated the working papers presented by the delegations of the Russian Federation and the Libyan Arab Jamahiriya on the question of sanctions.

27. Alongside the work carried out by other bodies, the Special Committee continued to play an important role in contributing to the reinforcement and democratization of the Organization. Accordingly, the Special Committee should accelerate its deliberations and finalize as early as possible the working papers that had been under consideration for several years, such as the revised working paper submitted by the delegation of Cuba on strengthening the role of the Organization and enhancing its effectiveness.

28. Regarding the Trusteeship Council, its existence did not entail any financial implications for the Organization and assigning it new functions would require an amendment to the Charter. Hence, there was no urgent need to decide whether to abolish it or change its functions, although it was appropriate that the question be dealt with in the overall context of the reform of the Organization.

29. The delegation of Viet Nam wished to express its appreciation for all efforts aimed at reducing the backlog in publication of the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council. Given the difficulties in continuing publication, Viet Nam supported the Committee's recommendation that the General Assembly examine the possibility of establishing a trust fund, to be financed by voluntary contributions, for the preparation, updating and publication of the Repertory.

30. **Mr. Qi** (China) said that it was high time for progress to be made on the question of assistance to third States affected by the application of sanctions. Given the profound implications of sanctions, they should be applied with great prudence and their use should be limited to the extent possible. The United Nations should actively explore ways of assisting third States adversely affected by sanctions by establishing funds and permanent consultative mechanisms.

31. On the question of the basic conditions and criteria for the application of sanctions, his delegation believed that the working paper entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (A/AC.182/L.114/Rev. 1), submitted by the delegation of the Russian Federation, was very relevant. The delegation of China believed

that the introduction of sanctions should follow strict criteria and should, in conformity with the provisions of the Charter of the United Nations and the rules of international law, be resorted to only after all peaceful means of dispute settlement had been exhausted.

32. As to ways and means of improving the working methods and enhancing the efficiency of the Special Committee, the delegation of China appreciated the initiatives undertaken by a number of countries to that end and advocated a pragmatic and consensus-based exploration, in the overall framework of United Nations reform, of ways to improve the Special Committee's efficiency. The delegation of China would give careful consideration to all proposals in that regard.

33. Concerning the present status of the Trusteeship Council and its future, the position of his delegation remained unchanged. China continued to believe that the question should be addressed in a holistic manner in the overall context of strengthening the role of the Organization and United Nations reform.

34. **Mr. Lavalle** (Guatemala) expressed concern at the limited outcome of the Special Committee's work over the years. Guatemala had participated actively in the work of the Special Committee, having submitted two proposals on peaceful settlement of disputes. One (relating to the model rules for conciliation) had been adopted. The other, which concerned expansion of the competence of the International Court of Justice to include disputes between States and international organizations, had been withdrawn by Guatemala, although it had reserved the right to resubmit the proposal at a time when prospects for its approval were more favourable. Guatemala believed that that amendment to the Statute of the Court provided an approach that might prove useful in the not too distant future, as there were an increasing number of multilateral agreements to which international organizations as well as States could be parties.

35. Guatemala supported the efforts within the Special Committee to eliminate the backlog in publication of the Repertory of Practice of United Nations Organs and find a solid means of continuing its publication. In that connection, his delegation attached particular importance to the concerns expressed in the last two sentences of paragraph 106 of the report, and it understood, although it regretted, the position of some delegations as reflected in the second sentence of paragraph 110. With that reservation, Guatemala fully supported the ideas put forward in paragraphs 107 to 111.

36. As for assistance to third States affected by sanctions, Guatemala favoured the creation of a fund or mechanisms to provide assistance, as suggested in paragraph 21 of the report, and it regretted the lack of the political will needed to take measures of that type. It would be useful for the Special Committee and then the Sixth Committee to undertake an in-depth examination of the comments and conclusions of the ad hoc expert group mentioned in paragraph 27 of the report, which were contained in chapter IV of the report of the Secretary-General contained in document A/53/312. However, Guatemala doubted that either the Special Committee or the Sixth Committee was in a position to form an opinion on some important elements in that chapter. Concepts such as "methods of impact assessment", "time series analysis of balance of payments changes" and "gravity model of bilateral trade flows" were difficult to understand for anyone not trained in economics and were not appropriate for consideration by the Special Committee or the Sixth Committee. Hence, if that chapter were eventually taken up for consideration, it would be wise to think about how the Second Committee might be involved in the work.

37. Although the General Assembly, in the framework of the report of the Special Committee, had adopted a detailed resolution on assistance to third States every year since 1995, and the Special Committee had been discussing the topic every year since before 1995, the Special Committee had contributed very little towards the adoption of those resolutions. Every year, the resolution had been drafted not at the recommendation of the Special Committee, but within the Sixth Committee. Guatemala believed that one factor behind that lack of effective leadership by the Special Committee was that every year the report which the Secretary-General submitted to the Assembly at its request was published after the dates during which the Special Committee had held its session that year. Consequently, the Special Committee had not been in a position to provide the General Assembly with input on the subject.

38. With regard to the proposals contained in sections B to F of chapter III of the report and those put forward in chapter V, Guatemala did not feel that it would be possible for the Special Committee to reach consensus

on any of them in the foreseeable future. His delegation therefore believed that the General Assembly should agree either to consider them biennially or postpone their consideration indefinitely.

39. Until 2002, the issue of peaceful settlement of disputes had not been examined by the Special Committee on a general level, as the agenda item had always included a sub-item that was specific. In 2003 and 2004, on the other hand, the topic had been considered without sub-items. Guatemala believed that if that practice continued, it would be impossible to make any headway on the matter. For that reason, it had attempted to focus the Special Committee's attention on arbitration, but its efforts had failed. He hoped that in 2005 the item would be accompanied by a sub-item other than the one that had been proposed, one that would prompt greater interest.

40. **Mr. León Romeiro** (Brazil), speaking on behalf of the member countries of the Rio Group (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela), thanked the Secretary-General for the comprehensive reports he had prepared at the request of the General Assembly with a view to analysing and proposing measures to mitigate the special economic problems which the application of sanctions caused to third States – whether near to or distant from the target State – which were often harmed by the side effects of sanctions.

41. The Rio Group believed that in those cases in which the Security Council deemed it necessary to apply preventive or coercive measures, it was essential to implement all available safeguards in order to minimize collateral damage to third States. The existence of a pre-established regime would also facilitate the involvement of international financial and trade institutions, which could contribute both their technical knowledge and the financial resources needed to compensate for such damage.

42. Regarding the Repertory of Practice of United Nations Organs, the Rio Group encouraged continued efforts to eliminate the backlog completely and translate the publication into other languages. To that end, the search for other possibilities should continue, such as the pilot project mentioned in the report, assuming that its final evaluation were to yield positive results. As to financing for the Repertory, the Rio Group reiterated the need to create a trust fund, to be financed by voluntary contributions, to enable its continued updating and publication. He recalled that a trust fund already existed for the Repertoire of the Practice of the Security Council; the two publications should be treated equally, in accordance with the recommendation of the Committee contained in the report. For that reason, he urged the Sixth Committee to take the necessary measures to follow that recommendation.

43. In the current context, in which reform of the Organization had become a priority, the Rio Group considered it necessary to improve the working methods of the Committee in order to increase its efficiency and, pursuant to resolution 58/248, identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations.

*Mr. Diaz Paniagua (Costa Rica) took the Chair.*

44. **Mr. Tajima** (Japan) recalled that the question of the implementation of the provisions of the United Nations Charter relating to assistance to third States affected by the application of sanctions under Chapter VII had been considered by the Sixth Committee during its April session. Various opinions had been expressed, including the view that it was necessary to pay attention to discussions in other forums. Japan hoped that further consideration would be given to that question.

45. His delegation noted with appreciation that a lively discussion had taken place on the revised working paper on the working methods of the Special Committee, presented at the beginning of the April session by Japan, together with the Republic of Korea, Thailand, Uganda and Australia. Taking into account the views expressed by the various delegations, Japan had submitted a new revised version of the paper for consideration by the Special Committee at its 2005 session, as indicated in paragraph 115 of the report. In that regard, Japan wished to reiterate that the purpose of the Special Committee was to strengthen the role of the United Nations and that strengthening the Special Committee itself would help fulfil that purpose. Improving the working methods of the Special Committee and enhancing its efficiency were thus of critical importance, and Japan hoped that the Sixth Committee would continue to give priority to that issue.

46. Regarding the Repertory of Practice of United Nations Organs, Japan reiterated that, while it did not deny the importance of the publication, it should be noted that the Secretary-General was endeavouring to introduce administrative and budgetary reforms in the United Nations that were necessary in order to increase both effectiveness and efficiency. His delegation considered that the publication of the Repertory did not necessarily conform to that goal.

47. **Ms. Zabolotskaya** (Russian Federation) said that the Special Committee on the Charter of the United Nations and on Strengthening of the Role of the Organization afforded Member States the opportunity to analyse the work of the Organization on such important issues as the application of sanctions, peacekeeping missions, peaceful settlement of disputes and the use of force, and it provided a means for them to make proposals to the organs of the United Nations on those issues. However, the States had not taken sufficient advantage of that opportunity.

48. During the 2004 session, productive work had been done on the working paper submitted by the Russian Federation on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures, which it had revised bearing in mind the views expressed by the various delegations. The Russian Federation remained open to further dialogue in that regard.

49. Another important issue before the Special Committee was assistance to third States affected by sanctions. The Russian Federation believed that the creation of a working group on the matter within the Sixth Committee would provide additional impetus for the work in that area. Drawing attention to another initiative of the Russian Federation on the fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations, she underscored the need to strengthen the legal basis for the mandate of peacekeeping missions. The Special Committee's conclusion of its work on that initiative would strengthen respect for the rule of law in conflicts. The Special Committee should also re-examine the working paper submitted by Belarus and the Russian Federation, which recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

50. Regarding the Repertory of Practice of United Nations Organs, the Russian Federation supported the initiative to create a special fund financed by voluntary contributions, and believed that both the Repertory and the Repertoire of the Practice of the Security Council should continue to be published.

51. The Russian Federation also supported the initiative of Japan to improve the work of the Committee, but it did not believe that achieving that objective should entail any modification in the format of the Committee's sessions or any limitation of delegations' right to submit proposals for its consideration.

52. **Mr. Sami** (Egypt), referring to the question of third States affected by sanctions, said that delegations had become increasingly aware of the repercussions that sanctions could have on both the civilian population of the target country and on third countries. Clearly, a balanced regime that would make it possible to achieve the objectives of sanctions had never been established; on the contrary, sanctions had effects that went beyond their intended objectives and harmed vulnerable populations in the countries. Moreover, sanctions did not necessarily bring about a change in the policies of the target country, and they affected third countries. All those collateral effects, which had long been envisaged in the Charter of the United Nations, should be avoided through strict application of the Charter. His delegation believed that a working group should be established within the Sixth Committee to examine the issue of sanctions and their consequences. In addition, the Security Council should consider taking action with a view to identifying ways of assisting countries to overcome the hardships caused by sanctions. The General Assembly should also play a more effective role in addressing the economic problems faced by countries affected by sanctions. As for ways and means of improving the work of the Committee and enhancing its efficiency, although Egypt appreciated the measures proposed by various countries, it believed that the role of the Committee should be strengthened, not curtailed.

53. **Ms. Ilgraf** (Turkey) noted that the Special Committee had received the mandate to consider, on a priority basis, the question of implementation of the provisions of the Charter relating to assistance to third

States affected by the application of sanctions, a matter to which Turkey attached the utmost importance, having long been such a third State. It therefore hoped that the deliberations within the relevant United Nations bodies would be concluded without further delay and that a functional mechanism would be established to provide assistance to third States. In the previous work of the Special Committee, a number of practical ideas had been put forward for addressing the hardships suffered by third States affected by the application of sanctions, such as according commercial exemptions, consulting directly with the States concerned, establishing a fund and giving priority to contractors from affected third States for investments in the target State. Turkey believed that an in-depth examination of the matter would yield new ideas as to the measures to be taken and would make it possible to find ways to ensure their effective application. In that connection, she underlined the responsibility of the Security Council to act without delay in reply to applications submitted by States under Article 50 of the Charter and to address the hardships incurred by third States. A related topic discussed by the Special Committee was the working paper submitted by the Russian Federation, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures." Turkey took note of the reference in the text to the effect that creating a situation in which the imposition of sanctions would inflict considerable material and financial harm on third States was not permissible.

54. In relation to the issue of peaceful settlement of disputes, Turkey underscored the importance of the principle of free choice of means. Regarding the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council, Turkey commended the Secretary-General for his ongoing efforts to reduce the backlog in their publication and supported the continuation of work on both the Repertory and the Repertoire. As for the working methods of the Special Committee, Turkey held the view that the Committee could and should be used more efficiently and that the duration of its sessions should be in accordance with the importance of its work.

55. **Mr. Elmessallati** (Libyan Arab Jamahiriya) considered the work of the Special Committee very important, given the significance of the issue of sanctions for countries and for the maintenance of international peace and the security. Sanctions were an instrument that had been used on many occasions by the United Nations in the framework of the Security Council, and they had also been used unilaterally within that framework. Additionally, sanctions had been used to enforce resolutions of the Council, as well as in other situations, one of which was the case of Libya. The Libyan people had suffered great hardship for a long time and had paid a high price in economic, social and health terms. Libya was therefore pleased that the sanctions imposed on it had been lifted. Nevertheless, his delegation was concerned that the practice of imposing sanctions continued without standards or criteria, and it believed that their effects on the weakest and most vulnerable groups in society had to be reduced, particularly as, in most cases, they were not justified. The Libyan Arab Jamahiriya had submitted to the Committee a working paper on strengthening of certain principles concerning the impact and application of sanctions in order to achieve their intended objectives. It was regrettable that the Special Committee, after more than three years and for reasons that had to do with lack of political will, had not reached any conclusion regarding that working paper. Although the question of third States affected by sanctions was very important, the issue of target countries was no less important. The Committee should examine the issue with the participation of all Members States with a view to developing an effective system of sanctions that would achieve the desired objectives. Sanctions should be temporary and targeted and should be based on legal, not political, grounds. It was also essential to bear in mind the humanitarian aspect of the imposition of sanctions and the impact on the weakest members of a population, a matter which should be examined in the most appropriate forum, namely the General Assembly.

56. As for the working methods of the Committee, the Libyan Arab Jamahiriya supported all the proposals for improving them in order to achieve tangible results. His delegation was concerned that the Committee had not made more progress on important issues such as sanctions and strengthening of the role of the United Nations in maintaining international peace and security. The Committee could only be strengthened through active participation by Member States in a spirit of cooperation, not through reduction of the time or resources allocated to it.

**Agenda item 151: Observer status for the Shanghai Cooperation Organization in the General Assembly** (A/C.6/59/L.3)

57. **The Chairman** drew the Committee's attention to draft resolution A/C.6/59/L.3, submitted by China.

*Draft resolution A/C.6/59/L.3 was adopted without a vote.*

**Agenda item 152: Observer status for the Southern African Development Community in the General Assembly** (A/C.6/59/L.5)

58. **The Chairman** drew the Committee's attention to draft resolution A/C.6/59/L.5, submitted by Botswana, noting that Uganda and the United Kingdom of Great Britain and Northern Ireland had joined the list of co-sponsors.

*Draft resolution A/C.6/59/L.5 was adopted without a vote.*

59. **Ms. Tajeldine** (Bolivarian Republic of Venezuela) welcomed the Southern African Development Community and expressed the conviction that its important work within the General Assembly would encourage in-depth examination of issues that were crucial for development, in particular the promotion of sustainable and equitable economic growth and socio-economic development for the eradication of poverty.

**Agenda item 157: Observer status for the Collective Security Treaty Organization in the General Assembly** (A/59/195 and Corr.1 and A/C.6/59/L.4)

60. **The Chairman** drew the Committee's attention to draft resolution A/C.6/59/L.4, submitted by Kazakhstan.

*Draft resolution A/C.6/59/L.4 was adopted without a vote.*

**Agenda item 159: Observer status for the Economic Community of West African States in the General Assembly** (A/59/232 and A/C.6/59/L.6)

61. **The Chairman** drew the Committee's attention to draft resolution A/C.6/59/L.6, submitted by Ghana, noting that Benin, Cote d'Ivoire, and the United Kingdom of Great Britain and Northern Ireland had indicated that they wished to be added as co-sponsors.

*Draft resolution A/C.6/59/L.6 was adopted without a vote.*

*The meeting rose at 12:15 p.m.*